

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MARTIN J WALSH, Secretary of Labor,  
United States Department of Labor,

Plaintiff,

v.

A&C TRUCKING LLC, et al.,

Defendants.

CASE NO. 3:21-cv-05847-DGE

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

**I. INTRODUCTION**

The Court heard this matter in a bench trial that began and ended on February 2, 2023. On January 10, 2023, the Court entered default against Defendant A&C Trucking LLC. (Dkt. No. 37.) On January 11, 2023, the Court entered default against Defendant Cory's Trucking LLC. (Dkt. No. 38.) The Court entered default against both Defendants for failing to obtain an attorney in violation of Local Civil Rule 83.2. (Dkt. Nos. 37 at 2; 38 at 2.) Plaintiff did not seek default judgment under Federal Rule of Civil Procedure 55(b). Neither A&C Trucking LLC nor Cory's Trucking LLC appeared at trial. Mr. Henning appeared pro se. The trial included testimony of witnesses and the admission of various exhibits into evidence. The parties submitted proposed, agreed findings of fact and conclusions of law.

## II. FINDINGS OF FACT

1. This is an action to enforce the employee protection provisions of the Surface Transportation Assistance Act of 1982 (“STAA”), 49 U.S.C. § 31105, and its implementing regulations, 29 C.F.R. § 1978.100, *et seq.* (See Dkt. No. 1.)
2. Zachary J. Frost (“Frost”) worked as a driver for A & C Trucking, LLC.
3. On or about August 26, 2019, A&C Trucking, LLC and Cory Henning terminated Frost from his employment after Frost expressed safety concerns about a load he was driving.
4. On or about September 26, 2019, Frost filed a retaliation complaint under STAA, with the Occupational Safety and Health Administration (“OSHA”) against A & C Trucking.
5. OSHA assigned Jared Klein, Regional Investigator, Whistleblower Protection Program (“Investigator Klein”), to investigate Frost’s complaint.
6. On July 9, 2021, following the conclusion of his investigation, Investigator Klein caused the issuance of the Secretary’s Findings in this matter (“Secretary’s Findings”).
7. The Secretary’s Findings found that reasonable cause existed to believe that A&C Trucking, LLC and Cory’s Trucking LLC violated STAA when they terminated Frost on August 26, 2019 because of Frost’s expression of safety concerns.
8. The Secretary’s Findings also contained the Secretary of Labor’s Preliminary Order (“Secretary’s Preliminary Order”).
9. The Secretary’s Preliminary Order required, among other things, for A&C Trucking, LLC, and Cory’s Trucking, LLC to: immediately reinstate Frost; pay Frost backwages due in the amount of \$37,257.52 (plus interest accrued thereon, which continues to accrue

1 until full backwages are paid); and to pay Frost punitive damages in the amount of  
2 \$10,000.

3 10. The Secretary's Findings and Preliminary Order provided that: "Respondent . . . ha[s] 30  
4 days from the receipt of these Findings to file objections and to request a hearing before  
5 and Administrative Law Judge (ALJ). If no objections are filed, these Findings will  
6 become final and not subject to court review."

7 11. The Secretary's Findings and Preliminary Order further provided that Objections must be  
8 filed in writing with:

9 **Primary method** – via email to: OALJ-Filings@dol.gov

10 **Secondary method** – (if unable to file via email) via hard copy submission to:  
11 Chief Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Department of Labor  
12 800 K Street NW, Suite 400 North  
Washington, D.C. 20001-8002  
13

14 12. The Secretary's Findings and Preliminary Order was addressed as follows:  
15

16 A & C Trucking  
33714 SE 27th St  
Washougal, WA 98671  
17

18 Cory Henning  
Cory's Trucking, LLC  
2601 H St.  
19 Washougal, WA 98671

20 Agent of Service  
Michelle Hans  
21 Roth Business Services, PLLC  
8836 W Gage Blvd. Suite 204A  
22 Kennewick, WA 99336  
23  
24

1 13. Other than the address block in the Secretary's Findings and Preliminary Order, Cory  
2 Henning's name does not appear in the text of the Secretary's Findings and Preliminary  
3 Order. *See id.*

4 14. The Secretary's Findings and Preliminary Order was served on each Defendant via  
5 courier (USP).

6 15. A&C Trucking, LLC and Cory's Trucking, LLC did not file an objection with the Office  
7 of Administrative Law Judges as the Secretary's Findings and Preliminary Order  
8 instructed.

9 16. As of January 25, 2023, taking into account further interim earnings the Secretary  
10 discovered in the course of litigation, the updated backwage amount due Frost is  
11 \$30,508.87 (\$27,925.01 plus interest in the amount of \$2,583.86), plus \$10,000.00 in  
12 punitive damages, for a total of \$40,508.87.

13 17. Interest on backwages due continues to accrue until all backwages plus all applicable  
14 interest calculated in accordance with 26 U.S.C. § 6621 is paid in full.

15 18. A&C Trucking, LLC, and Cory's Trucking, LLC have not complied with any of the  
16 terms of the Secretary's Findings and Preliminary Order.

### 17 III. CONCLUSIONS OF LAW

18 1. OSHA complied with all notice requirements regarding the Secretary's Findings and  
19 Preliminary Order in serving A&C Trucking, LLC and Cory's Trucking, LLC. *See*  
20 29 C.F.R. § 1978.105(b).

21 2. OSHA did not provide Defendant Cory Henning notice that he was a responsible  
22 party under STAA. *See id.*

23 3. The Secretary's Preliminary Order became a Non-Appealable Final Order with  
24 respect to A&C Trucking, LLC and Cory's Trucking, LLC and, as such, is not subject

1 to court review. 49 U.S.C. § 31105(b)(2)(B); 29 C.F.R. § 1978.105.

- 2 4. This Court has the authority and jurisdiction to enforce the Secretary's Non-  
3 Appealable Final Order against Defendants A & C Trucking, LLC and Cory's  
4 Trucking, LLC. *See* 49 U.S.C. § 31105(e); 29 C.F.R. § 1978.106(b).
- 5 5. Pursuant to the Court's authority, the Court adopts the entirety of the Secretary's  
6 Non-Appealable Final Order as its own as to Defendants A & C Trucking, LLC and  
Cory's Trucking, LLC.

#### 7 **IV. ORDER**

- 8 1. Pursuant to the Court's authority, the Court adopts the entirety of the Secretary's Non-  
9 Appealable Final Order as its own with respect to Defendants A & C Trucking, LLC and  
10 Cory's Trucking, LLC.

11 a. Defendants A&C Trucking, LLC and Cory's Trucking, LLC are ordered to  
12 immediately pay Zachary Frost backwages and interest due in the amount of  
13 \$37,257.52 (plus interest accrued thereon from the date January 25, 2023, which  
14 continues to accrue until full backwages plus all accrued interest is fully paid).


15 b. Defendants A&C Trucking, LLC and Cory's Trucking, LLC are ordered to  
16 immediately pay Zachary Frost punitive damages in the amount of \$10,000.00.

17 c. Defendants A&C Trucking, LLC and Cory's Trucking, LLC are ordered to  
18 immediately expunge Zachary Frost's employment records of any reference to the  
19 exercise of his rights under STAA.

20 d. Defendants A&C Trucking, LLC and Cory's Trucking, LLC shall not retaliate or  
21 discriminate against Zachary Frost in any manner for instituting or causing to be  
22 instituted any proceeding under or related to STAA.

- 1 e. Defendants A&C Trucking, LLC and Cory's Trucking, LLC shall immediately  
2 post in a conspicuous place in or about each of their facilities, including in all places  
3 where notices for employees are customarily posted, including the Defendants'  
4 internal web site for employees or e-mails, if the Defendants customarily use one or  
5 more of these electronic methods for communicating with employees; and maintain  
6 for a period of at least 60 consecutive days from the date of posting, the notice to  
7 employees (Exhibit A to Proposed Judgment, Dkt. No. 60), to be signed by a  
8 responsible official of each and the date of actual posting to be shown thereon.
- 9 2. Defendants A&C Trucking, LLC and Cory's Trucking, LLC are ordered to provide the  
10 Secretary proof of each of the five listed requirements found in paragraphs a-e of this  
11 Judgment by submitting cancelled checks, a photograph of the posting identified in  
12 paragraph e, and notarized attestations that each Defendant has fully complied with the  
13 Judgment's requirements. Proof shall be provided to the undersigned within five  
14 business days of the requirement's competition. Defendant Cory Henning is dismissed  
15 with prejudice from this action.

16  
17 Dated this 28th day of April, 2023.

18  
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21 David G. Estudillo  
22 United States District Judge  
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